



ID #11584  
SG

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**STATE DEPARTMENT OF HIGHWAYS  
AND PUBLIC TRANSPORTATION**

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JANUARY 28, 1991

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Attention: Mr. Rick Gilpin  
Opinion Committee

**Opinion Committee**

**Questions Presented:** What fees are permitted to be charged by county and district clerks in eminent domain proceeding and when are such fees due and payable by a governmental entity such as the State Department of Highways and Public Transportation (hereinafter referred to as the "department") to such clerks?

Dear Mr. Gilpin:

The above subject questions have arisen as a result of a request from the Williamson County District Clerk's Office for the payment of certain fees by this department for services rendered in connection with the docketing of eminent domain cases and the assignment of such cases to a district court for administration pending the appointment of Commissioners. We were advised that the Williamson County District Clerk is going to require that this department pay \$35.00 for each condemnation case that is docketed. The \$35.00 fee, according to the District Clerk, will be assessed pursuant to §51.319(5) of the Government Code and will be required to be paid prior to any objections being filed or the rendition of judgement. Since the Williamson County District Clerk has reportedly taken the position that it will begin to refuse to accept statements of condemnation from this department if the assessed fee is not paid, we respectfully seek your advice.

Our research on the subject questions is as follows.

**Discussion of Fees Which a County Clerk is Entitled to Collect in Eminent Domain Cases:**

On numerous occasions your office has been asked for advice concerning the fees which a county clerk is entitled to collect for services rendered in eminent domain cases. See. Attorney General Opinions M-483 (1969), C-164 (1963), WW-1008 (1961), and V-726 (1948). In 1967 the Legislature amended Title 61, Revised Civil Statutes of Texas, 1925 by adding Article 3930(b), which authorized clerks of county courts to collect a fee of twenty-five dollars for services rendered in an eminent domain proceedings, with or without objections. See. Acts 1967, 60th Leg., p. 1785, ch. 680., V.T.C.S., article 3930(b)(A) (ii) [now repealed]. A subsequent amendment to article 3930(b) in 1977, did not change the authority of the clerks to collect the twenty-five dollar fees. See. Acts 1977, 65th Leg., p. 765, ch. 291. In 1981, an amendment to article 3930(b) changed the authorized fee from twenty-five to thirty dollars. See. Acts 1981, 67th Leg., p. 2341, ch. 574. In addition, further amendments to article 3930(b) in 1983 and 1985 did not change the authority of the clerks to collect the thirty dollar fees. See. Acts 1983, 68th Leg., p. 500, ch. 101; Acts 1985, 69th Leg., p. 746, ch. 180; and Acts 1985, 69th Leg., p. 1381, ch. 321.

Then in 1987 the Legislature took several actions with respect to article 3930(b). The 70th Legislature repealed article 3930(b) with the adoption of the Local Government Code, and amended article 3930(b) without reference to its repeal. See. Acts 1987, 70th Leg., chs. 149 and 974. The amendment provided, in pertinent part, as follows:

**"A. fees for County Civil Courts Dockets**

"(1) For each cause of action, or docket in County Civil Courts: for filing, or filling and registering, or filing and recording, and for docketing and including taxing costs for each and all applications, complaints, petitions, returns, documents, papers, legal instruments, records and/or proceedings; for issuing, including the recording of the return thereon, each and all citations, notices, subpoenas, commissions to take depositions, executions while the docket is still open, garnishments before judgments, orders, writs, processes, or any and all other instruments, documents or papers authorized, permitted or required to be issued by said county clerk for said clerk of county courts on which a return must be recorded; for all attendances in court as clerk of court; for impaneling a jury; for swearing witnesses; for approving bonds involved in court actions; for administering oaths; and for all other clerical duties in connection with such county civil court docket:

"(a) For each original cause or suit in a County Civil Court, . . . a fee to be due and payable . . . at the time said cause or suit is filed, started or initiated . . .

..  
"(ii) For eminent domain, or condemnation proceedings, with or without objections: a fee of . . . . . \$30.00. . . . "

The above stated amendment was thereafter repealed by Acts of the 71st Legislature. See. Acts 1989, 71st Leg., ch. 1.

In that fees for eminent domain cases have now been totally deleted from statutory language, it could be argued that such fees are now included in §118.052 of the Local Government Code which allows a county court to collect \$40.00 for services rendered for the filing of original actions other than actions for garnishment after judgment, and are due pursuant to §118.053 at the time the original cause of action is filed. However, this would be a plausible argument if not for an Attorney General Opinion which determined that "it is established that a condemnation, in its initial stage, is not a cause, action, or suit in a Court, but is an administrative proceeding" and "therefore, fees which are payable by other condemners are not payable until an objection is filed by the condemnor or a judgment is entered." See. Attorney General Opinion No. M-142 (1967).

Moreover, since §118.011(c) of the Local Government Code also authorizes county courts to charge reasonable fees for services rendered and does not subject this authorization to an action being filed, your opinion with respect to that portion of the subject question of this letter dealing with county clerks would be greatly appreciated.

**Discussion of Fees Which a District Clerk is Entitled to Collect in Eminent Domain Cases:**

In 1971, district courts were given concurrent jurisdiction in eminent domain cases; however, the Legislature failed to establish a specific fee to be charged by district clerks for services rendered in eminent domain cases. See. Article 3266a, V.T.C.S., which was repealed by Acts 1983, 68th Leg., p. 3729, ch. 576, and Article 1970-62.1, V.T.C.A., which was repealed by Acts 1987, 70th Leg., ch. 148. Despite this omission, in an Attorney General Opinion rendered in 1974, it was determined that district clerks were authorized to charge, pursuant to then Article 3928, V.T.C.S., a reasonable fee for the services rendered in eminent domain proceedings. See. Attorney General Opinion No. H-453 (1974). (Article 3928 was repealed by Acts 1985, 69th Leg., ch. 480. see

Mr. Rick Gilpin

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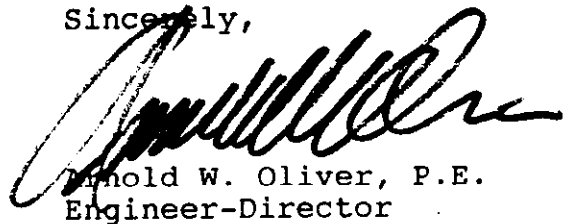
now. §51.319(5) of the Government Code.) This opinion did not, however, determine when such fees were to be paid.

Since §51.319(5) of the Government Code omits language that such fees are in connection with an "action" it is arguable whether Attorney General Opinion No. M-142 (1967) is applicable to district court fees and whether such fees are not to be paid until objections or a judgment are filed. It is also noted that there is a provision in the Government Code pertaining to district court fees which is very similar to §118.052 of the Local Government Code. According to §51.317 of the Government Code "the district clerk shall collect at the time the suit or action is filed the fees provided by subsection (b) of this section for services performed by the clerk . . . ." The fee pursuant to subsection (b) for filing a suit, including an appeal from an inferior court is \$35.00. While this section appears to be comparable to §118.052, according to Attorney General Opinion H-453, it is not to be used with respect to district clerk fees in eminent domain proceedings.

#### Conclusion

Based on all of the above and because our own research has failed to reach firm conclusions on the questions presented, we respectfully seek your opinion on these questions. As always, your attention to our request for opinion is greatly appreciated. Please advise if any further information from this department will be required.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold W. Oliver".

Arnold W. Oliver, P.E.  
Engineer-Director